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APPLICATION NO.	F	TILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
10/801,020	10/801,020 03/15/2004		Magnus Hallback	P04,0023	1014	
26574	7590	02/24/2006		EXAMINER		
SCHIFF H	•		ALI, SHUMAYA B			
6600 SEARS TOWER				ART UNIT	PAPER NUMBER	
CHICAGO,	, IL 6060	06-6473	3743			
				DATE MAIL ED: 02/24/2004	DATE MAIL ED: 02/24/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)					
	10/801,020	HALLBACK ET AL.					
Office Action Summary	Examiner	Art Unit					
	Shumaya B. Ali	3743					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1) Responsive to communication(s) filed on 15 M	Responsive to communication(s) filed on 15 March 2004.						
2a) ☐ This action is <b>FINAL</b> . 2b) ☒ This	action is non-final.						
3) Since this application is in condition for allowar	ondition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under E	x parte Quayle, 1935 C.D. 11, 45	3 O.G. 213.					
Disposition of Claims							
4) ☐ Claim(s) 1-7 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.  5) ☐ Claim(s) is/are allowed.  6) ☐ Claim(s) 1-7 is/are rejected.  7) ☐ Claim(s) is/are objected to.  8) ☐ Claim(s) are subject to restriction and/or election requirement.							
Application Papers							
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) access applicant may not request that any objection to the Replacement drawing sheet(s) including the correct and the option of the optio	epted or b) objected to by the Eddrawing(s) be held in abeyance. See ion is required if the drawing(s) is obj	e 37 CFR 1.85(a). ected to. See 37 CFR 1.121(d).					
Priority under 35 U.S.C. § 119							
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>							
Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other: <u>detailed actic</u>	ate atent Application (PTO-152)					
S. Patent and Trademark Office							

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## **DETAILED ACTION**

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## Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 18 of <u>U.S. Patent No. US Patent No. 6,761,166 B2.</u>

Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant' apparatus claim 7 reads on claims 1 and 18 of the published patent. Claim 7 limitations "aspiration tubing " reads on "a first tube", "an extraction unit" reads on "suction unit", and "a regulating unit" reads on "control unit" of claims 1 and 18. Method claims are also considered obvious over claims 1 and 18.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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3. Examiner has done a through search and indicated as many patents/pending applications

that are subject to Double Patenting rejections. However due to the time limit given to examine

each application, the Examiner might have overlooked other pending applications or patents that

would be considered for Double Patenting rejection. Therefore, the applicant is requested to

inform the Examiner to such corresponding pending application(s) and/or Patent(s) and file

Terminal Disclaimer accordantly.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The

examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner

Art Unit 3743

Supervisory Patent Examiner